

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOHN J. IZAGUIRRE,)	
)	
Plaintiff,)	No. 1:19-cv-01454
)	
v.)	Hon. John Z. Lee
)	
ABLE ENGINEERING DBA CROWN)	Magistrate Judge Sunil R. Harjani
ENERGY,)	
)	
Defendant.		

**DEFENDANT’S FED. R. CIV. P. 12(B)(5) AND (B)(6) MOTION TO DISMISS
PLAINTIFF’S COMPLAINT OF EMPLOYMENT DISCRIMINATION**

Defendant CROWN ENERGY SERVICES, INC. D/B/A ABLE ENGINEERING SERVICES (“Able” or “Defendant”), incorrectly named Able Engineering DBA Crown Energy, by and through its undersigned attorneys, pursuant to Rules 12(b)(5) and (6) of the Federal Rules of Civil Procedure, hereby respectfully moves to dismiss the Complaint of Plaintiff JOHN J. IZAGUIRRE (“Plaintiff”) for insufficient service of process and failure to state a claim. In support of this motion, Able states as follows:

1. On February 28, 2019, Plaintiff filed a *pro se* Complaint in this matter alleging age, color, disability, national origin, and race discrimination and retaliation in connection with two suspensions he received in December 2017. (ECF No. 1, ¶¶ 9, 12-13.)

2. Plaintiff attached to his Complaint copies of Charges of Discrimination filed with the Equal Employment Opportunity Commission (“EEOC”). (ECF No. 1, pp. 8-9.) Plaintiff filed the first Charge on August 10, 2018, and alleged national origin discrimination for Able’s alleged failure to contribute to Plaintiff’s pension. (*Id.* at p. 9.) Plaintiff thereafter amended his Charge on December 12, 2018 to add a claim for retaliation for being “suspended twice.” (*Id.* at p. 8.)

3. The Court thereafter ordered that Summons issue to “Able Engineering.” (ECF No. 6.)

4. On February 28, 2019, Plaintiff himself handed the Summons and Complaint to Lucy Wasson at 150 North Wacker Drive, Chicago, Illinois. (ECF Nos. 7, 9.)

5. Lucy Wasson is an Administrative Assistant and is not an officer or agent of Able authorized to receive service of process on behalf of Able pursuant to Fed. R. Civ. P. 4(h).

6. The service of the process in this matter is insufficient for two reasons. First, Plaintiff, as a party, cannot serve a summons and complaint on Able. *See* Fed. R. Civ. P. 4(c)(2). Second, service on a corporation must be made on an “officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process” or “by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State.” Fed R. Civ. P. 4(h)(1)(A), (B), 735 ILCS 5/2-204. Accordingly, Plaintiff’s Complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(5) for insufficient service of process.

7. Additionally, Plaintiff’s Complaint must be dismissed because he did not file a timely Charge of Discrimination with the EEOC. Specifically, Plaintiff’s Complaint alleges Able discriminated and retaliated against him by suspending him in December 2017. But, Plaintiff did not file a Charge of Discrimination addressing retaliation or these suspensions until December 2018, more than 300 days later. Thus, Plaintiff’s claims are time-barred and must be dismissed.

8. In addition, and in the alternative, Plaintiff’s Complaint fails to state a claim for age, color, disability and/or race discrimination. Plaintiff failed to exhaust his administrative remedies with respect to such claims because his Charge of Discrimination filed with the Equal Employment Opportunity Commission does not allege age, color, disability or race discrimination. Accordingly, these claims must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendant CROWN ENERGY SERVICES, INC. D/B/A ABLE ENGINEERING SERVICES respectfully requests that this Court enter an Order granting Defendant's Motion and dismiss the Complaint of Plaintiff JOHN J. IZAGUIRRE for insufficient service of process. In the alternative, Defendant respectfully requests that this Court dismiss Plaintiff's Complaint with prejudice due to his failure to timely file a Charge of Discrimination, or, in the alternative, dismiss Plaintiff's age, color, disability, and/or race discrimination claims with prejudice for failure to exhaust administrative remedies, and award Defendant such further relief as it deems just.

DATED: March 21, 2019.

Respectfully submitted,

By: /s/ Goli Rahimi
Attorney for Defendant
CROWN ENERGY SERVICES, INC. D/B/A
ABLE ENGINEERING SERVICES

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on March 21, 2019, the foregoing *Defendant's Motion to Dismiss Plaintiff's Complaint of Employment Discrimination* was filed electronically with the Clerk of Court using the ECF system, which sent notification of such filing to the following:

John J. Izaguirre
9119 26th Street
Brookfield, IL 60513

Pro Se Plaintiff

The undersigned attorney further certifies that she caused a copy of the foregoing to be delivered to Plaintiff by U.S. Mail, postage prepaid, to the address above.

/s/ Goli Rahimi
Attorney for Defendant

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